IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2007

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P.No.24224 of 2006

M.Balan ... Petitioner

-vs-

1. Tamil Nadu Water Supply and Drainage Board, rep. By its Managing Director, Chepauk, Chennai.

2. Legal Cell, rep. By its Law Officer, Tamil Nadu Water Supply and Drainage Board, Chepauk, Chennai-5.

3. S.Anji
Junior Accounts Officer,
Tamil Nadu Water Supply and
Drainage Board, Internal Audit
Wing, Madurai.

4. S.Jeyabalan,
Junior Accounts Officer,
Tamil Nadu Water Supply and
Drainage Board, Head Office,
Chepauk, Chennai.

5. S.Jeyachandran,
Junior Accounts Officer,
Tamil Nadu Water Supply and
Drainage Board, Internal Audit
Wing, Coimbatore. ... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus as stated below.

For Petitioner : Mr.Kandavadivel Doraisami
For Respondents : Mrs.Sudarsana Sundar
for RR1 and 2

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O R D E R

This writ petition has been filed seeking issuance of Writ of Certiorarified Manadamus to call for the records of the first respondent Board relating to B.P.Ms.No.68 (ENT-I Wing), dated 18.7.2006 and quash the same in so far as Respondents 3 to 5 are concerned and to direct the 1st respondent Board to include the name of the petitioner in the panel of Junior Accounts Officers fit for promotion as Accounts Officers in TWAD Board for the year 2006 below Sl.No.2 G.Sivaganesan (Seniority No.56) and above Sl.No.3 Anji (Seniority No.67).

2. The petitioner joined in the Tamil Nadu Water Supply and Drainage Board in the year 1970 as Junior Assistant. He was promoted as Assistant in the year 1974 and further promoted as Divisional Accountant in 1980. The said post of Divisional Accountant is re-designated as Junior Accounts Officer. In the year 1985, the petitioner was posted as Divisional Accountant, R.W.S.Division, Uthagamandalam and he worked there till 3.5.1989. It is the case of the petitioner that he found certain irregularities in the procurement of materials in R.W.S. Division and he immediately brought to the attention of the higher officials, viz., the Executive Engineer. On 15.11.1989, the petitioner was shocked to receive the suspension order dated 11.11.1989. But, no charge memo was issued despite several representations made by him. Thereafter, he was reinstated in service on 5.9.1991. The petitioner is also stated to have sent several representations to the authorities requesting them to regularise the period of suspension between 15.11.1989 and 4.9.1991 as per Rule 54-B(3) and (4) of Fundamental Rules of Tamil Nadu Government. The petitioner also filed a writ petition in W.P.No.15962 of 1996 before this Court seeking regularisation of the period of suspension, which was allowed by this Court by order dated 24.10.1998.

3. While things are such, the respondents issued several charge memos against the petitioner, but, admittedly, they were all stated to have quashed. It is submitted by the learned counsel appearing for the respondents that though liberty is granted while quashing the said charge memos, they had not proceeded further. It is the case of the petitioner that only one charge memo dated 12.1.2002 was pending during the relevant period, which was challenged by him by filing a writ petition before this Court in W.P.No.3778 of 2002, which was disposed of by order dated 1.4.2002, whereunder, it is observed thus :-

> "... In case, the respondent does not dispose of the Disciplinary enquiry within a period of 6 months, it is directed to consider the claim of the petitioners for further promotions as if there is no disciplinary enquiry is pending against them, if they are otherwise fit and

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eligible for promotion. It is further made clear that the petitioners should not unduly delay or drag on the Department proceedings and if the petitioners are the cause for the delay of proceedings, the period taken by the petitioners is to be excluded in computing the period of six months."

4. Pursuant to the above order, the respondent filed a petition seeking extension of time and this Court, by order dated 27.11.2002, allowed the petition extending the time for a further period of one year. It is the case of the petitioner that in spite of the above specific direction of this Court in the order dated 1.4.2002, the respondents while drawing the panel for promotion on 18.7.2006, did not include the name of the petitioner. Hence, the petitioner has filed the present writ petition seeking to quash the panel of promotion dated 18.7.2006.

5. Mr.Kandavadivel Doraisamy, learned counsel appearing for the petitioner, reiterated the contents of the affidavit filed in support of the petition and submitted that there was only one charge memo dated 12.1.2002 was pending against the petitioner, which was issued invoking Regulation 9(b) of the Tamil Nadu Water Supply and Drainage Board Employees' (Discipline and Appeal) Regulations, 1972. It is pointed out by the learned counsel for the petitioner that at the time of disposal of W.P.No.3778 of 2002, this Court has categorically observed that, in case, the disciplinary enquiry was not completed within the said time, the claim of the petitioner can be considered for further promotion, as if there is no disciplinary enquiry pending against the petitioner, if he is otherwise fit and eligible for promotion. It is further submitted by the learned counsel that the said enquiry proceedings were completed and punishment of stoppage of increment for a period of one year without cumulative effect was ordered on 12.3.2007, which is challenged by him in a separate writ petition in W.P.No.11176 of 2007 and the same is pending. Pointing out the said fact, the learned counsel submitted that on the date of drawing of panel on 18.7.2006, the petitioner was very much eligible, but the respondents with ulterior motive, failed to include his name in the said panel and hence, he prayed for quashing the said panel dated 18.7.2006.

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6. On the other hand, Mrs.Sudarsana Sundar, learned standing counsel appearing on behalf of respondents 1 and 2, submitted that though the disciplinary proceedings pursuant to the charge memo dated 12.1.2002 was not completed as per the order dated 1.4.2002 passed in W.P.No.3778 of 2002, there was a criminal case pending against the petitioner and the respondents has also accorded sanction for prosecution and hence, his name was not considered.

7. Admittedly, there was only one charge memo dated 12.1.2002 that was pending against the petitioner during the relevant period

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and even in respect of the said charge memo, this Court, while disposing of W.P.No.3778 of 2002 by order dated 1.4.2002, directed the respondent to dispose of the disciplinary enquiry pending against the petitioner within a period of six months and if the enquiry was not completed within the said time, directed to consider the case of the petitioner for further promotion, as if no disciplinary enquiry is pending against them, if otherwise he is eligible. The said period of six months to complete the disciplinary enquiry was further extended by another one year at the instance of the respondents, however, the direction to consider his name for promotion was not altered. The learned standing counsel for the respondents/ Board submitted that there was a criminal case pending against the petitioner and others and the respondents also accorded sanction for prosecution and that was the reason for not including the petitioner's name in the panel drawn on 18.7.2006. But, no details were furnished before this Court by the respondent as to when the sanction for prosecution was accorded and as to whether any charge sheet has been filed or not. However, the learned counsel appearing for the petitioner submitted that no charge sheet has been filed against the petitioner till date. The learned counsel for the petitioner brought to the notice of this Court the Government Letter dated 20.10.1997 in Ms.No.248, P & AR Department, relating to inclusion in the panel for promotion during pendency of vigilance enquiry and submitted that mere registration of cases in Courts need not be held against the officers, but if charge sheet has been filed in the criminal case, it should be held against the officers. The said legal position is not disputed by the learned standing counsel appearing for respondents 1 and 2.

8. In view of the discussion made above, this Court is of the considered opinion that there is no valid reason for not including the name of the petitioner while drawing the panel for promotion on 18.7.2006 and hence, respondents 1 and 2 are directed to give promotion to the petitioner from the date in which his juniors were promoted and to extend all consequential benefits thereof. The said exercise shall be considered by respondents 1 and 2 within a period of eight weeks from the date of receipt of copy of this order.

The writ petition is disposed of on the above terms. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

sra

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To

1. The Managing Director,
   Tamil Nadu Water Supply and
   Drainage Board, Chepauk,
   Chennai.

2. The Law Officer, Legal Cell,
   Tamil Nadu Water Supply
   and Drainage Board, Chepauk,
   Chennai-5.

+1cc to M/s.Muthumani Doraisami, Advocate Sr 49546
+1cc to Mr. Sudarsana Sundar,Advocate Sr 49212

BK (CO)
km/16.8.

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